

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

US INVENTOR INC., TINNUS)
ENTERPRISES, LLC, 10TALES, INC.,)
STRAGENT, LLC, 360 HEROS, INC.,)
RAMZI MAALOUF, LARRY GOLDEN,)
WORLD SOURCE ENTERPRISES, LLC)
and E-WATCH, INC.,)
Plaintiffs,)
v.)
DREW HIRSHFELD, in his official)
capacity Performing the functions and duties)
of the Under Secretary of Commerce for)
Intellectual Property and Director, United)
States Patent and Trademark Office,)
Defendant.)

Civil Action No. 2:21-cv-00047

CONDITIONAL PROTECTIVE NOTICE OF APPEAL

Notice is hereby given, pursuant to Fed. R. App. P. 3 and 4, that Plaintiffs US Inventor Inc., Tinnus Enterprises, LLC, 360 Heros, Inc., Ramzi Maalouf, Larry Golden, World Source Enterprises, LLC and E-Watch, Inc., in the above named case, hereby conditionally appeal to the United States Court of Appeals for the Federal Circuit from the Final Judgment entered in this action on July 13, 2021 (Dkt. 29), and from all other decisions and orders supporting the final judgment and the memorandum opinion in support thereof.

Plaintiffs have already appealed to the Fifth Circuit, and do not believe that jurisdiction lies in the Federal Circuit. The well pleaded allegations against the Defendant concern (1) failure to conduct APA notice and comment rulemaking even though Congress used the term “shall” to

command such rulemaking, and (2) actions taken to sidestep lawful rulemaking by using an ad hoc “Standard Operating Procedure” document (instead of rulemaking) to “bind” USPTO employees over how they adjudicate certain matters. Such allegations are patent law agnostic, and are of a type commonly adjudicated in the regional courts of appeals in cases brought against a variety of federal agencies. Therefore, this action did not “arise under” the Patent Act, which means that any appeal would not fall within the plain language of the Federal Circuit’s jurisdictional statute, 28 U.S.C. § 1295(a).

This Notice of Appeal is filed “conditionally” because Appellee has stated a contention that jurisdiction lies exclusively in this Court. In the unlikely event that the Appellee makes a challenge to jurisdiction, and the Fifth Circuit agrees with Appellee, this Notice of Appeal is intended to preserve Appellants’ rights.

Dated August 10, 2021

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2021, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.



Michael C. Smith